

DISCRIMINATION IN MORTGAGE LENDING

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INTRODUCTION/ HMDA DATA

- Redlining – The historic practice of mortgage lenders not offering prime mortgage loans in communities of color
- Reverse redlining- A newer practice of targeting communities of color for exploitative loan products, which tend to result in much higher incidence of foreclosure
- The proliferation of aggressive reverse redlining explains the concentration of foreclosures in minority communities

INTRODUCTION/ HMDA DATA

- In the aftermath of the foreclosure crisis, recent Home Mortgage Disclosure Act (“HMDA”) Data Shows Dramatic Evidence of:
- Disproportionally Fewer Loans Made in Minority Neighborhoods; and
- Disproportionally Higher Rejection Rates in Minority Neighborhoods.

Subprime Lending/ Reverse Redlining

- Unconventional, high –cost loans frequently targeted to minority communities
- Contained predatory features such as:
- Adjustable Rate Mortgages (“ARMs”) w artificially low teaser rates
- “3/27s” or “2/28s”
- High fees and charges paid from loan proceeds
- Payment of “yield spread premiums” or kickbacks
- No escrow accounts for taxes and insurance
- “80/20” loans

Subprime Lending/ Reverse Redlining

- Deceptive practices included and targeting:
- saturating minority-oriented media w advertising
- making “cold call” solicitations to minority neighborhoods
- making presentations at African-American churches
- developing relationships w African-American mortgage brokers
- emphasizing the low “teaser” rates and payments
- failing to do underwriting on the payment after the change date
- Failing to disclose the absence of an escrow account in the payment amount

EVIDENCE OF TARGETING

- 56% of loans in zip code areas w more than 70% African- American residents were subprime
- 24% of loans in zip code areas w more than 70% Caucasians were subprime
- In 2008, more than 4% of homes in African- American neighborhoods were foreclosed
- In 2008, less than 1% of homes in Caucasian neighborhoods were foreclosed
- The exponential effect of this trend was mind-boggling

City of Memphis and Shelby County v. Wells Fargo

- In 2008, the Shelby County Commission UNANIMOUSLY authorized a lawsuit against as many as 16 national mortgage lenders for damages caused by their reverse- redlining practices.
- It appropriated \$125,000 to fund the initial stages of the litigation
- The Memphis City Council later passed a similar resolution and authorized a \$125,000 appropriation

City of Memphis and Shelby County v. Wells Fargo

- On December 31, 2009 a suit was filed in US District Court on behalf of the City and County against Wells Fargo pursuant to the Fair Housing Act for damages they suffered as a result of excessive foreclosures caused by reverse redlining
- Wells Fargo was chosen as the initial defendant because its “death rate” was 8 to 1 in minority communities
- 51% of its loans in minority areas were subprime, while only 17% in white areas were subprime

City of Memphis and Shelby County v. Wells Fargo

- The FHA provides for very broad standing for any “legal person” who has suffered a “distinct and palpable injury” as a result of discriminatory practices
- The City and County were damaged in the following ways economically:
- Vacant foreclosed properties are a public nuisance causing extensive expense in housing code enforcement
- Vacant properties are magnets for crime causing frequent police calls
- There are frequent fires in vacant properties causing expensive fire truck calls
- Vacant properties devalue neighboring properties, reducing property tax revenues

City of Memphis and Shelby County v. Wells Fargo

- Settlement – Wells Fargo tried to have the case dismissed on the argument that the plaintiffs couldn't show a distinct and palpable injury traceable to it
- The trial court ultimately denied the motion and ruled that we could proceed to discovery
- This paved the way to settlement of \$7,500,000 to the City and County
- Funds (\$4,500,000) were used for a down payment assistance program
- This was the first successful action by a municipality for reverse redlining
- Almost simultaneously, the Justice Dept. announced a sweeping settlement with Wells Fargo and a number of subsequent settlements with other mortgage lenders

AFTERMATH OF THE PREDATORY LENDING/REVERSE REDLING/ FORECLOSURE APOCALYPSE

- The settlements described above did not nearly compensate the enormous damage done
- Property values in Shelby County dropped by approximately 30% immediately after the crash- the vast bulk of the loss was in minority communities
- The Immergluck and Smith study
- Reduction in home equity had a profound effect on minority wealth:
- Economic Policy Institute study from 2009 showed white wealth had dipped by 34%- black wealth had dipped by 77% after the foreclosure crisis
- 2010 Center for Responsible Lending Study- lost wealth in communities of color of \$350 billion dollars
- The Civil Rights issue of this era
- 11% of African- Americans and 17% of Hispanics were foreclosed or at great risk
- The reduction in property values affects all in the community- not jst those who got bad loans

BANK REO DISPOSITIONS

- The National Fair Housing Alliance 2012 study and administrative complaints:
- Found “troubling disparities in maintenance and marketing practices”
- White neighborhoods had “manicured lawns, securely locked doors, and attractive ‘for sale’ signs”
- Communities of color had “overgrown yards littered w trash, unsecured doors, broken windows, and indications of distressed sales”

BANK REO DISPOSITIONS

- The problem in Memphis may be worse:
- There is an alarming conversion from owner-occupied housing to rental; consider
- **For the 5-year period from Jan. 1, 2007 19,550 (75%) of those foreclosures were in majority minority census tracts**
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- **16,200 (more than 62%) of those foreclosed properties were purchased from banks by investors**
- **9,767 (less than 38%) were purchased by owner occupants**
- **95% of the foreclosed properties were owner- occupied before foreclosure, yet less than 38% are now owner occupied.**
- **This trend is significantly altering the incidence of home-ownership in communities of color**
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BANK REO DISPOSITIONS

- TWO MAJOR FAIR HOUSING IMPLICATIONS:
- First, the disproportionate concentration of foreclosures in minority neighborhoods is a product of reverse redlining, or targeting those areas for toxic loans likely to end in foreclosure.
- The second is that there is disparate treatment in the disposition of properties in those areas:
- There is substantial evidence that certain banks are not offering properties for sale through traditional listing in minority areas, but are rather marketing exclusively on internet websites that are the domain of investor groups.

CONCLUSION

- Going back full circle, remember the data about low lending activity and high loan rejection rates in communities of color?
- Remember the data about targeting communities of color for predatory loans, which ended in disproportionate foreclosures?
- Remember the data about bank owned post-foreclosure REO properties going overwhelmingly to investors rather than potential homeowners?
- Does any enterprising fair housing lawyer think there may be a fair housing case there?

